IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.83 OF 2005

Kasabai Gajanan Pisal & ors. Petitioners
vs.
Narmadabai Bhaguji Pisal & ors. Respondents

Mr.Vijay D. Patil for the petitioners.

Mr.Vishwanath S. Talkute for the respondent no.1

CORAM : B.H. MARLAPALLE,J.

DATED : 31st August 2005

P.C.

Heard Mr.Patil, the learned counsel for the petitioner, who is aggrieved by an order dated 6th August 2004 passed by the learned Joint Civil Judge, J.D., Phaltan, whereby the applications filed at Exhibits 25 and 33 in Regular Darkhast No.247/2000 have been allowed.

2. R.C.S. No.250/1983 was dismissed by the learned Civil Judge, J.D., Phaltan on 12th December 1989 and, therefore, the plaintiff filed Reg. Civil Appeal No.51/1990. The learned 4th Additional District Judge at Satara allowed the appeal and held that the plaintiff was entitled for 1/3rd share in the agricultural land and house properties mentioned in paragraph 1A and 1B of the plaint. It was further directed to carve out the plaintiff's share from the agricultural land by sending the decree to the Collector under Section 54 of the C.P.C. This decree passed by the lower Appellate Court

was not challenged by any other defendants and the decree was also not acted upon. The plaintiff, therefore, filed Reg. Darkhast No.247/2000. While it was pending, the plaintiff-applicant submitted an application at Exhibit 25 for bringing the LRs of original defendant no.2 on record on his demise. The proposed LRs were the wife of deceased defendant no.2 and his two sons. This application was submitted on or about 12th February 2001 and during the pendency of the said application, another application at Exhibit 33 was made adding two more LRs i.e. the daughters of the original defendant no.2. Both these applications were opposed by the original defendant no.1 by filing say at Exhibit 29. The learned Judge of the executing Court allowed these applications by imposing cost quantified at Rs.500/-.

3. Mr.Patil, the learned counsel for the petitioner, who is one of the LRs sought to be brought on record in place of defendant no.2 submitted that the applications filed were hopelessly belated and even Reg. Civil Appeal No.51/1990 had already abated against the defendant no.2. As per Mr.Patil, the reasoning given by the executing Court in allowing these applications is contrary to law and, therefore, the impugned order is required to be set aside.

4. The court below has referred to the decision in the case of Bhagwan Swaroop v. Mool Chand, A.I.R. 1983

S.C.355 and also the fact that the property under the decree was a joint property. The judgement debtors are more than one and in any case the individual share of the defendant no.2 was not earmarked. In addition, the decree holder and the judgement debtors were the members of the same family and the plaintiff was the widow of the brother of original defendant nos. 1 and 2. It is also clear that during the pendency of the appeal which was decided on 7.7.1999, none of the judgement debtors took an objection that the appeal had abated against the defendant no.2 in spite of the fact that they were the members of the same family. The view taken by the Court below is for ensuing that the decree passed by the lower Appellate Court is not defeated on hyper-technical grounds and, therefore, the applications at Exhibits 25 and 33 have been allowed by noting down that the judgement debtor no.2 died on 10.10.1996 and the death certificate was issued on 1.11.1996.

5. The view taken by the Court below is a possible view and the reasoning given by the said Court in support of the impugned order cannot be termed as perverse or manifestly erroneous. The civil revision application thus fails and the same is hereby rejected summarily.

(B.H. MARLAPALLE,J.)